

Date: 20080327

Docket: T-1041-07

Citation: 2008 FC 391

Ottawa, Ontario, this 27th day of March, 2008

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

SHOU HONG VINCENT WANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal under subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29 [Act], from the decision of a Citizenship Judge (Decision), rendered April 5, 2002, wherein Mr. Wang's application for Canadian citizenship was refused on the grounds that he did not have an adequate knowledge of Canada and of the responsibilities and privileges of citizenship, as required by subsection 5(1)(e) of the Act.

[2] The Citizenship Judge also considered whether to make a recommendation for an exercise of ministerial discretion under subsections 5(3) and 5(4) of the Act, but concluded that there was no

evidence of special circumstances presented at the hearing that would justify making such a recommendation.

Background

[3] Mr. Wang is a citizen of Taiwan. He obtained permanent resident status in Canada on February 5, 2000 and submitted his application for citizenship on April 11, 2004. Mr. Wang was scheduled twice to write the citizenship test. He missed the test both times (once due to an error on his part, and the second time because of no fault of his own). Consequently, Mr. Wang was scheduled for a hearing.

[4] Mr. Wang attended the interview and was asked a number of questions for the purpose of testing his knowledge of Canada. He states in his affidavit that he answered all of the questions correctly. However, he admits that when the Citizenship Judge questioned him about who is eligible to vote in a federal election, he failed to mention one of the three requirements for voting. Mr. Wang was informed of the Citizenship Judge's refusal of his application for citizenship by letter dated April 12, 2007.

Issues

[5] The issues raised in this appeal are as follows:

- 1. Did the Citizenship Judge err in finding that the Applicant did not have adequate knowledge of Canada and of the responsibilities and privileges of citizenship?**

2. **Did the Citizenship Judge breach the rules of fairness by failing to provide sufficient reasons for her Decision?**

Reasons

1. **Did the Citizenship Judge err in finding that the Applicant did not have adequate knowledge of Canada and of the responsibilities and privileges of citizenship?**

[6] There has been general consensus in this Court that the applicable standard of review in citizenship appeals where the issue is whether the residency requirement has been met (which is a question of mixed fact and law) is reasonableness *simpliciter* (*Zhao v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1536, *Canada (Minister of Citizenship and Immigration) v. Chang*, 2003 FC 1472; *Chen v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 85). However, this Court has recognized on numerous occasions that, as in the present case, a Citizenship Judge's determination of whether an applicant has sufficient knowledge of Canada is a purely factual question for which greater deference should be shown by the Court (*Arif v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 557; *Abdollahi-Ghane v. Canada (Attorney General)*, 259 F.T.R. 9; *Huang v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 861, 47 Imm. L.R. (3d) 259).

[7] The patent unreasonableness standard was recently abolished by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9. Thus, the applicable standard of review is

reasonableness. However, even if the patent unreasonableness standard had been applied, my findings on this issue as set out below would be the same.

[8] Section 5(1) of the Act sets out the necessary criteria for obtaining citizenship. Among other things, section 5(1) requires that an applicant have “an adequate knowledge of Canada and of the responsibilities and privileges of citizenship” (*Citizenship Act*, s. 5(1)(e)). Section 15 of the *Citizenship Regulations*, S.O.R./93-246 stipulates the criteria used for assessing whether a person has the requisite knowledge to satisfy section 5(1)(e) of the Act:

- | | |
|--|--|
| <p>15. The criteria for determining whether a person has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship are that, based on questions prepared by the Minister, the person has a general understanding of</p> | <p>15. Une personne possède une connaissance suffisante du Canada et des responsabilités et privilèges attachés à la citoyenneté si, à l'aide de questions rédigées par le ministre, elle comprend de façon générale, à la fois :</p> |
| <p>(a) the right to vote in federal, provincial and municipal elections and the right to run for elected office;</p> | <p>a) le droit de vote aux élections fédérales, provinciales et municipales et le droit de se porter candidat à une charge électorale;</p> |
| <p>(b) enumerating and voting procedures related to elections; and</p> | <p>b) les formalités liées au recensement électoral et au vote;</p> |
| <p>(c) one of the following topics, to be included at random in the questions prepared by the Minister, namely,</p> | <p>c) l'un des sujets suivants, choisi au hasard parmi des questions rédigées par le ministre :</p> |
| <p>(i) the chief characteristics of Canadian social and cultural</p> | <p>(i) les principales caractéristiques de l'histoire</p> |

history,	sociale et culturelle du Canada,
(ii) the chief characteristics of Canadian political history,	(ii) les principales caractéristiques de l'histoire politique du Canada,
(iii) the chief characteristics of Canadian physical and political geography, or	(iii) les principales caractéristiques de la géographie physique et politique du Canada,
(iv) the responsibilities and privileges of citizenship, other than those referred to in paragraphs (a) and (b).	(iv) les responsabilités et privilèges attachés à la citoyenneté autres que ceux visés aux alinéas a) et b).

[9] The questions in sections 15 (a) and (b) are mandatory. To successfully complete the assessment, an applicant must answer these questions correctly. It is clear from the Citizenship Judge's reasons that the Applicant was unable to answer the mandatory question regarding who can vote in a federal election. Mr. Wang admits that he did not answer this question correctly.

[10] However, Mr. Wang submits that the Citizenship Judge erred by assessing his knowledge of Canada at an incorrect and unreasonably high standard. He alleges that he answered "all of the Judge's questions correctly, with the exception of one part of a three part question." According to Mr. Wang, this level of knowledge should have been sufficient to convince the Judge, on a balance of probabilities, that he had an adequate knowledge of Canada and of the responsibilities and privileges of citizenship.

[11] The Applicant further argues that the Judge “placed too much evidence on one question, while ignoring all the other evidence of my knowledge of Canada and my strong establishment in Canada.”

[12] Because the Decision only gives one ground for denying the application i.e. the Applicant’s failure to answer the mandatory question regarding who can vote in a federal election on the basis of the information contained in the self-instructional material, this Application must stand or fall on the issue of whether the Citizenship Judge was in a position to reject the application on that sole ground and without reference to any other question or any other answers that the Applicant gave to those questions.

[13] The evidence before me is that the Applicant only had difficulty in answering one part of one question posed by the Judge. So was the Judge entitled to rely upon this deficiency and ignore all of the other answers the Applicant gave concerning his knowledge of Canada?

[14] In his written argument, the Applicant says the Judge ignored “all of the other relevant factors which demonstrate that Canada is the place where the Applicant has centralized his mode of existence,” and the Act only requires that the Applicant have “an adequate knowledge of Canada and of the responsibilities and privileges of citizenship” so that the Judge set “an incorrect and unreasonably high standard” on the knowledge issue. The Applicant argues that the Act requires an “adequate knowledge” and not a “perfect knowledge.”

[15] The Applicant adduces no authority for the proposition that residency and establishment factors can or should be used by a citizenship judge to offset any deficiencies that are detected on the knowledge side of the application. In the absence of any such authority from either the Act or the jurisprudence, the Applicant has not satisfied me that the Judge made a reviewable error from this perspective.

[16] But the Applicant also argues that the Judge required “perfect knowledge” and the Act only requires “adequate knowledge.”

[17] To begin with, I believe this assertion is wrong on the facts. A requirement that the Applicant regurgitate from self-instructional material that the ability to vote in Canada requires three basic conditions, does not impose a requirement that the Applicant have a perfect knowledge of Canada and of the responsibilities and privileges of citizenship. The questions are set by the Minister with a view to ascertaining “adequacy,” not perfection. What the Applicant is really complaining about is that he was required to mention all three points from the self-instructional material.

[18] I cannot say that, on the basis of the material and the arguments that the Applicant has placed before the Court on this point, that the Decision was unreasonable from this perspective.

[19] The Applicant says:

As noted above, the Applicant was able to answer all of the Judge’s questions correctly, with the exception of one part of a three part

question. It is submitted that this level of knowledge should have been sufficient to convince the Judge, on a balance of probabilities, that the Applicant had an adequate knowledge of Canada and the responsibilities and privileges of citizenship.

[20] Justice Gauthier in *Haddard v. Canada (Minister of Citizenship and Immigration)*, 2003

FCT 692 at paragraph 12 had the following to say on point:

Parliament provided that each and every condition set out in section 5 of the Act must be met before the privilege [of Canadian citizenship] is granted, unless the requirements are waived on compassionate grounds, or because of special and unusual hardship, or to reward services of an exceptional value.

[21] Section 5(1)(e) of the Act requires that a person have an “adequate knowledge of Canada and of the responsibilities and privileges of citizenship.” The Act does not define “adequate knowledge.” Instead, it authorizes the Governor in Council to make regulations that set out the criteria used to determine whether a person has an adequate knowledge of the responsibilities and privileges of citizenship:

27. The Governor in Council may make regulations

[...]

(d) providing for various criteria that may be applied to determine whether a person

(i) has an adequate knowledge of one of the official languages of Canada,

(ii) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship, or

27. Le gouverneur en conseil peut, par règlement :

[...]

d) établir les divers critères permettant de déterminer :

(i) la connaissance suffisante de l'une des langues officielles au Canada,

(ii) la connaissance suffisante du Canada et des responsabilités et avantages attachés à la citoyenneté,

(iii) has a substantial
connection with Canada;

(iii) l'existence de liens
manifestes avec le Canada;

[22] Like section 5 of the Act, the criteria listed in paragraph 15 of the *Regulations* are cumulative. Thus, a person must demonstrate that they have a general understanding of each topic listed in paragraphs 15(a) and (b) and one of the topics, as selected by the Minister, in paragraph 15(c). In my view, the effect of this is that a failure to correctly answer questions on the topics covered in any of the three areas results in a fail, even if the Applicant has demonstrated an adequate knowledge in other areas.

[23] The Applicant argues that the Citizenship Judge should have found that he had an adequate knowledge given that he was able to answer all of the Judge's questions correctly, with the exception of one part of a three part question. However, the one part of a three part question he answered incorrectly was a mandatory question that he was required to answer correctly in order to satisfy paragraph 15(a). In my view, the Citizenship Judge's assessment that the Applicant's answer was not correct was not unreasonable. The Citizenship Judge took the position that the answer provided must be either complete or incomplete and chose not to accept a partial answer. The Citizenship Judge, in my view, is in the best position to determine whether the Applicant correctly answered the question. Therefore, the application on this ground must fail.

2. **Did the Citizenship Judge breach the rules of fairness by failing to provide sufficient reasons for her decision?**

[24] The Applicant submits that the Citizenship Judge's reasons are inadequate because they are devoid of crucial elements prescribed in the Department's Manual, including a discussion of the evidentiary and factual findings, an analysis of the facts, as well as deductions drawn from the analysis. The Applicant argues that the Citizenship Judge merely provided an overview of the legislation and a general statement about the topic about which he felt the Applicant had insufficient knowledge. He notes that the Citizenship Judge provided no information as to the questions that were posed to the Applicant or the Applicant's score on the oral examination.

[25] The issue of whether reasons are adequate is an issue of procedural fairness reviewable on a standard of correctness (*Andryanov v. Canada (Minister of Citizenship and Immigration)* 2007 FC 186 at para. 15; *Jang v. Canada (Minister of Citizenship and Immigration)* (2004), 250 F.T.R. 303 at para. 9; *Adu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 565 at para. 9). A pragmatic and functional analysis is not required (*Canadian Union of Public Employees v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539 at para. 44).

[26] Not only do reasons foster better decision-making by ensuring that the issues and reasoning are well-articulated, but they also provide a basis for an assessment of possible grounds for appeal or review. This is particularly important when a decision is subject to a deferential standard of review (*VIA Rail Canada Inc. v. National Transportation Agency*, 193 D.L.R. (4th) 357 (F.C.A.) at paras. 17, 19 (F.C.A.) [*Via Rail*]).

[27] The duty requires that the reasons be adequate. They must set out the findings of fact and must address the major points in issue. The reasoning process followed by the decision-maker must be set out and must reflect a consideration of the main relevant factors. Further, a determination of whether reasons are adequate must be considered in light of the particular circumstances of each case. Where a person's status is at issue, the requirements are more stringent (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paras. 25, 75, *Via Rail*, above, at paras. 21-22).

[28] In the present case, the Citizenship Judge only gives one reason for rejecting the Applicant's application for citizenship. He says that the Applicant "did not have an adequate knowledge of Canada and the responsibilities and privileges of citizenship" because "At the hearing, you [the Applicant] were unable to answer mandatory (*sic*) question correctly; in respect to who can vote in a Federal Election."

[29] The Citizenship Judge then goes on to explain the legal basis for his conclusions:

According to Section 15 of the *Citizenship Regulations*, which prescribes the criteria for determining whether or not an applicant has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship, you must be able to correctly answer questions prepared by the Minister based on the information contained in self-instructional material approved by the Minister and presented to applicants for the grant of citizenship.

[30] So it is clear that the reason the Applicant was rejected was that he did not answer correctly the mandatory question about who can vote in a federal election from the self-instructional material he had received.

[31] We are not told in the Decision what it was, precisely, the Applicant did not answer in relation to this specific question, but the Applicant himself knew what he had done and had failed to do because he sets it out in his affidavit:

34. I attended the hearing on April 5, 2007 at 8:00 a.m. before Judge Assadovrian.
35. At the hearing the Judge asked me a number of questions to test my knowledge of Canada. He asked me about the politics and geography of Canada.
36. I was able to answer all her questions correctly.
37. However, when the Judge asked me about who can vote in a Federal election, I answered that in order to vote, one must be at least 18 years old and a Canadian citizen.
38. Unfortunately, the Judge was not satisfied with my answer because I did not state the third requirement for voting, namely, that the voter must be registered on the voters list.

[32] The Respondent does not dispute these facts. So the Applicant knew why he was rejected, either because the Judge told him at the time that he had not referred to the registered voter requirement, or because it was clear from the self-instructional material that a complete answer to the voting requirement question required a reference to voter registration.

[33] So as regards this Applicant, I think that the reasons are adequate because he was given a clear explanation and rationale for why he had failed, and it was something he understood.

[34] In the present case, the reasons provided by the Citizenship Judge are not, in my view, inadequate. They clearly indicate the facts, the Judge's conclusion and the reasons supporting the decision. The Applicant was found not to have met the knowledge requirement because he was unable to answer a mandatory question correctly. The question was in relation to who can vote in a federal election.

[35] Given the particular circumstances of this case (that the Applicant failed to correctly answer a mandatory question) the Citizenship Judge was not required to provide a lengthy analysis. Had the Applicant answered the mandatory questions correctly, but answered a number of other questions incorrectly, then the Citizenship Judge would have been required to offer a more extensive analysis of her reasons for finding that the Applicant had not satisfied section 5 of the Act on a balance of probabilities. But this is not the case here.

[36] Further, the Citizenship Judge did not err by failing to indicate the Applicant's score, as it was irrelevant once the Judge concluded that the Applicant had failed to answer correctly a mandatory question. Also, in order to protect the integrity of the citizenship testing process, the examination questions were not disclosed.

[37] There was no reviewable error on this issue. For these reasons, the appeal is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the appeal is dismissed.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1041-07

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THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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**REASONS FOR
JUDGMENT** March 27, 2008

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